IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10189 to 10192 & 10194 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SWAMI FLATS OWNERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR UTPAL M PANCHAL for Petitioners

MR AJ DESAI, ld.AGP for respondent no.1

MR BH BHAGAT for HM BHAGAT for Respondent No.2

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/04/2000

COMMON ORAL JUDGEMENT

All these five Special Civil Applications are based on identical facts and involve common questions of law. Therefore, I propose to decide all these Special Civil Applications by this common judgment and order as under:

1. The petitioners herein had presented the documents for registration on which the stamp duty was required to be paid. Such documents were presented in the year 1992 upon which the stamp duty was paid, but the concerned Dy. Collector issued show cause notices to the petitioners that the stamp duty paid by the petitioners was short and they were required to be pay the deficient amount. The dates of such notices have not been given by the petitioners. Such notices were, however, withdrawn by the Dy. Collector, Stamps, on 2.4.1996 in all these cases. Thereafter the Chief Controlling Revenue Authority issued notices to the petitioners under Sec.53A. Section 53A is reproduced as under:

"53A. Revision of Collector's decision under Sections 32, 32A, 39 and 41:

(1) Notwithstanding anything contained in sub-section (3) of Section 32, sub-section (3) of section 32-A, sub-section (2) of section 39 and sub-section (3) of section 41, when through mistake or otherwise any instrument is charged with less duty than leviable thereon, or is held not chargeable with duty, as the case may be, by the Collector, the Chief Controlling Revenue Authority may, within a period of six years from the date of certificate of the Collector under Sections 32, 32A, 39 or 41, as the case may be, required the concerned party to produce before him the instrument and, after giving a reasonable opportunity of being heard to the party, examine such instrument whether any duty is chargeable or any duty is less levied thereon and pass an order for recovery of the deficit duty, if any, from the concerned party. An endorsement shall thereafter be made on the instrument after payment of such deficit duty.

(2) On failure to produce the original instrument by the party, the Chief Controlling Revenue Authority shall proceed under this section on the basis of the true copy or an abstract of the instrument filed with the Collector and such true copy or abstract shall be deemed to be the original instrument for

the purposes of this section."

2. It is clear that Sec.53A(1) starts with a non-obstante clause and therefore, this provision is applicable notwithstanding the provisions of sub-section (3) of Section 32, sub-section (3) of Section 32A, sub-section (2) of Section 39 and sub-section (2) of Section 41. It covers the cases in which a deficient stamp duty has been charged on an instrument by the Collector by mistake or otherwise. The provision is, therefore, wide enough to include not only the cases of mistake by the Collector, but also other cases. In such cases, the Chief Controlling Revenue Authority may issue the notices within a period of six years from the date of the certificate of the Collector under Sec.32, 32A, 39 or 41 requiring the parties to produce before him the instrument and, after giving a reasonable opportunity of being heard, examine such instruments and in case it is found that the duty charged is less, he may pass appropriate orders for recovery of the deficit duty. The present impugned orders which have been passed by the Chief Controlling Revenue Authority on 7th June 1999 and which are impugned in these petitions are orders of this nature under Sec.53A requiring the petitioners to make good the deficient stamp duty. It is admitted before this Court in the pleadings and even at the time of arguments that the show cause notices had been given to the petitioners before passing the impugned orders on 7th June 1999 in case of each of the petitioners, nay, an opportunity of personal hearing was also afforded to the each of the petitioners. Thus, the requirement of Sec.53A(1) have been fully complied with by the Chief Controlling Revenue Authority before passing the impugned orders dated 7th June 1999 and there is no dispute that the action had been taken within a period of six years from the date on which the Collector had passed the order withdrawing the notices i.e. 2.4.1996. Thus, there is no violation of Sec.53A by the author of the impugned orders. So far as the grievance that the orders have been passed in cyclostyled form, I find that the grievance is not legitimate in as much as in such cases when the grounds are common and only particulars with regard to the amount etc. are different, the reasons being the same, it is sufficient to meet the requirement of law if for common reasons the matters are decided by filling in the necessary particulars of amount etc. relating to each case. There is no infirmity whatsoever in the impugned orders. It also appears that even the Rule in these cases was issued by taking it be cases identical to certain other Special Civil Applications Nos.8036/99 to 8044/99 and allied matters and in fact

along with the petitions, a copy of the order dated 22nd October 1999 passed in so called identical cases had also been filed as Annexure.B. These Special Civil Applications Nos. 8036/99 to 8044/99, 8190/99, 8191/99 and 8289/99 have already been decided by a common judgment and order on 30th March 2000 and the same have also been dismissed. The only common ground in these petitions and the petitions numbered above was that the order was cyclostyled. There was no other common ground and those cases have been decided on their own merits and the same have been dismissed. I do not find any substance in these Special Civil Applications. These five Special Civil Applications are hereby dismissed. Ad-interim relief automatically comes to an end. The Rule is hereby discharged. No order as to costs.

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(M.R. Calla, J.)

Sreeram.